

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

DOCKET FILE COPY ORIGINAL

RECEIVED
JUL 14 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard") hereby submits the following
Reply Comments in response to the above-captioned Notice of Proposed Rule Making.^{1/}

With only occasional divergence on discrete issues, the vast majority of parties
in this proceeding -- representing a broad cross-section of the CMRS industry -- have
presented uniform support for the Commission's market-based proposals on interconnection
issues. The record confirms that the Commission's market-oriented approach is the best way
to preserve the emerging competition and innovative service development that characterize
today's CMRS marketplace.

Like Vanguard, virtually all parties agree with the Commission's conclusion
that imposition of a general interstate interconnection obligation is premature and
unwarranted.^{2/} The CMRS marketplace is rapidly developing, and the record reflects a

^{1/} Notice of Proposed Rule Making, In the Matter of Interconnection and Resale
Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54
(released April 20, 1995) ("Notice").

^{2/} See, e.g., Comments of Airtouch Communications, Inc. (June 14, 1995), at 2-9;
Comments of the American Mobile Telecommunications Association, Inc. (June 14,
1995), at 3-7; Comments of AT&T Corp. (June 14, 1995), at 5-18; Comments of the
Cellular Telecommunications Industry Association (June 14, 1995), at 3-15;
Comments of Comcast Cellular Communications, Inc. (June 14, 1995), at 5-20;
Comments of Nextel Communications, Inc. (June 14, 1995), at 2-5; Comments of the
Personal Communications Industry Association (June 14, 1995), at 4-7; Comments of
PCS Primeco, L.P. (June 14, 1995); Comments of Sprint Telecommunications

No. of Copies rec'd
List A B C D E

05 11

broad industry consensus that the Commission should not impose interconnection obligations that may constrain efficient market choices and impose needless costs on wireless providers and consumers. CMRS providers possess neither the incentive nor ability to deny interconnection for anti-competitive purposes, and the extent to which direct CMRS-to-CMRS interconnection is even desirable is unclear. Under such circumstances, the Commission's decision to ensure maximum flexibility to CMRS providers in negotiating CMRS-to-CMRS interconnection arrangements is a wise policy course, and will not hamper existing or emerging CMRS providers or their customers with the costs and inefficiency of unnecessary regulation.^{3/}

The comments also exhibit widespread support for the Commission's market-based approach with respect to roaming issues, though Pacific Telesis and Pacific Bell have dissented from this view. PacBell and PacTel advocate a mandatory roaming obligation, expressing the fear that cellular providers may seek to exploit the ubiquity of their cellular networks by refusing to enter into roaming agreements with new competitors, or by favoring

Venture at 2-9; see also Notice at ¶¶ 29-31.

^{3/} Various commenters, including Vanguard, have agreed with the Commission's conclusion that reliance on the Section 208 complaint process is sufficient to remedy any limited instances where interconnection disputes may arise. See, e.g., Comments of CTIA (June 14, 1994), at Comments of GTE (June 14, 1995), at 8-9; Comments of NYNEX (June 14, 1995), at 5 & n.11; Comments of SouthWestern Bell Mobile Systems, Inc. (June 14, 1995), at 8-10. New Par and Comcast have pointed out, however, that the Section 208 complaint process is designed only to seek redress for already-encountered violations of the Communications Act and Commission rules; such complaints are not the proper procedural vehicles for seeking or resolving the merits of interconnection requests in the first instance. See Comments of Comcast Cellular Communications, Inc. (June 14, 1995), at 16-19; Comments of New Par (June 14, 1995), at 15-17. Vanguard agrees with these parties that, in this context, the Commission should clarify that Section 208 complaints would not lie until (1) the Commission were to adopt a generally applicable interconnection requirement; or (2) there is unlawful discrimination or other act that independently gives rise to a complaint. See Comments of New Par at 17.

only those PCS providers with which they may be affiliated. PacTel and PacBell also assert that parties will not make investments necessary to support roaming --e.g., by developing dual-mode dual-band handsets -- unless there is the assurance of the ability to obtain contractual agreements for roaming to take place.

Although Vanguard is sensitive to such concerns, and has urged the Commission to monitor carefully any discriminatory developments with respect to roaming,^{4/} the relief sought by Pactel and PacBell is simply not supported by the present state of the CMRS industry. As Vanguard and others have pointed out, private negotiations among CMRS carriers already have produced dramatic and favorable price and coverage changes with respect to roaming service.^{5/} There is every reason to expect that such negotiations will continue to do so in response to marketplace demand, without the need for the distortions and inefficiencies that attend regulatory intervention.

It is in the economic interest of each carrier to ensure seamless roaming capabilities for their subscribers.^{6/} Although there is an important need for Commission

^{4/} See Comments of Vanguard Cellular Systems, Inc. (June 14, 1995), at 9-10.

^{5/} See id.; see, e.g., Comments of Bell Atlantic Mobile Systems (June 14, 1995), at 8 ("The record show no evidence of refusals to enter roaming agreements. To the contrary, carriers demonstrate that it is in their economic interest to enter into roaming agreements."); Comments of the PCIA (June 14, 1995), at 8 (noting that "the willingness of the industry to negotiate roaming agreements absent Commission intervention has been demonstrated in the cellular context"); Comments of PCS Primeco, L.P. (June 14, 1995), at 8-9 ("There is no evidence that cellular carriers have refused to enter into roaming agreements, and hence there is no reason to believe that they will deny roaming access to new carriers.").

^{6/} Furthermore, as several parties rightly point out, many new PCS systems will employ air interfaces that are incompatible among themselves and across existing cellular and ESMR systems. See, e.g., Comments of PCS Primeco, L.P. at 8; Comments of Western Wireless Corporation (June 14, 1995), at 7. The current state of flux in the CMRS marketplace suggests that it would be difficult and unwise to mandate technical standards for roaming at a time when CMRS providers are either in a state of nascent

vigilance in policing competitive abuses, there is no need for mandatory roaming obligations at this time.

Finally, apart from the rhetorical machinations of the usual proponents, there is no credible support for the so-called reseller switch or "unbundling" proposals.^{7/} First, the reseller switch proposals are wholly untested and loaded with technical and operational problems -- all of which would burden facilities-based wireless carriers and their customers with tremendous costs.^{8/} More fundamentally, however, this most intrusive form of regulation is utterly unnecessary, and directly contrary to the Commission's efforts to structure a dynamic and competitive CMRS industry.

As Vanguard and others have observed, resellers presently provide cellular service to customers today without switch-to-MTSO interconnection. They can negotiate resale arrangements directly with cellular providers which, because of interconnection by other CMRS providers through LEC facilities, allows calls to terminate not only to landline telephones but to all other CMRS providers who are interconnected with the PSTN.

development or in the midst of digital conversion. The Commission should let the marketplace determine the optimal method of attaining interoperability among adjacent or competing mobile systems.

^{7/} See, e.g., Comments of Cellular Service, Inc. & Comtech Mobile Telephone Company (June 14, 1995); Comments of the National Wireless Resellers Association (June 14, 1995).

^{8/} As AT&T observes, such problems include the fact that there are no IS-41-like protocols that can route all traffic cases to a resellers' switch to complete the call; that 911 calls by reseller switch subscribers would require special applications and back-up service by the MSO; and that reseller switch malfunctions will result in "hammering," i.e., end users will "hammer" the network repeatedly with attempts to access the reseller switch, which would generate voice channel allocations and reduce the number of voice channels for other cellular customers. See Comments of AT&T Corp. (June 14, 1995), at 30; see also Comments of CTIA (June 14, 1995), at 32.

Reseller connection at a carrier's switch would not provide any benefits to end users beyond those that are currently available.^{9/} On the other hand, the record evidence indicates overwhelmingly that such proposals would have costs in incentives and innovation that extend far beyond the already significant technical and operational costs of implementation.

Switch-based resellers would assume none of the cost of acquiring mobile spectrum. Neither would they assume the financial risk and the construction expenditure of building out CMRS systems, or the responsibilities of being a facilities-based CMRS licensee. Nevertheless, the switch based resellers ask the Commission to allow them to pick apart CMRS networks after the fact, notwithstanding their utter non-involvement in building a facilities-based business. By requiring resellers to have access to every "placed-out" portion of a CMRS network -- with no demonstrable gains to consumers -- the Commission would vastly reduce the incentives of CMRS providers to innovate and upgrade their networks.

Such a result is not in the public interest, and is incompatible with the Commission's preference for curing market imperfections by "lowering entry barriers in order to encourage competition rather than by regulating existing licensees."^{10/} Mandatory reseller access to unbundled service is fundamentally anti-competitive because it undermines

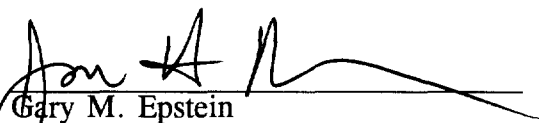
^{9/} See Comments of Vanguard Cellular Systems, Inc. (June 14, 1995), at 13. In addition, switch-based resellers will have many more opportunities to enter into resale arrangements with facilities-based CMRS networks in the near future due to the rapid influx of new wireless facilities-based competition. Although this further highlights the complete absence of any justification for FCC imposition of the extreme form of physical interconnection that the switch-based resellers seek, this influx of new CMRS competition will increase their opportunities to voluntarily negotiate switch-based resale with CMRS carriers if it is technically feasible and makes economic sense to do so.

^{10/} CPUC Order at ¶ 24.

carriers' competitive incentives to take risks, invest aggressively and develop technologically sophisticated networks.^{11/} For this reason, among many others, the Commission should affirm its tentative conclusion to reject the reseller-switch proposals.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.



Gary M. Epstein
James H. Barker
LATHAM & WATKINS
Suite 1300
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2505
(202) 637-2200

and

Richard C. Rowleson
Senior Vice President and General Counsel
VANGUARD CELLULAR SYSTEMS, INC.
2002 Pisgah Church Road
Suite 300
Greensboro, North Carolina 27455
(910) 545-2223

July 14, 1995

^{11/} Comments of Airtouch Communications, Inc. (June 14, 1995), at 19.